

Exhibit 14

(Deposition of Albert D. Hoffman)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - - - -
ROAD-CON, INC., NESHAMINY : CIVIL ACTION
CONSTRUCTORS, INC., LOFTUS : NO. 2:19-cv-01667-JS
CONSTRUCTION, INC., :
PKF-MARK III, and SCOTT A. :
LACAVA :
Plaintiffs, :
-V- :
CITY OF PHILADELPHIA and :
JAMES KENNEY, IN HIS :
OFFICIAL CAPACITY AS MAYOR :
OF THE CITY OF PHILADELPHIA :
Defendants. :

- - -
Friday, September 25, 2020
- - -

ORAL ZOOM DEPOSITION OF ALBERT D.
HOFFMAN, taken pursuant to the Subpeona, held remotely
and by Zoom videoconference in Pennsylvania, commencing
at 9:00 a.m., before SHARON RICCI, RMR, CRR - Notary
Public there being present.

A P P E A R A N C E S:

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EXAMINATION BY:

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MR. WEINERT:	31
MR. ZIMOLONG:	36

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1 COURT REPORTER: Counsel, I will
2 read a stipulation into the record. Please
3 bear with me, as it is long.

4 It is hereby stipulated and agreed
5 by and between counsel for all parties present
6 that pursuant to 231 Pa. Code 4002 this
7 deposition is being conducted by Zoom
8 conference, that the court reporter, all
9 counsel, and the witness are all in separate
10 remote locations and participating via Zoom
11 conference meeting under the control of
12 Strehlow & Associates Court Reporting Service,
13 that the officer administering the oath to the
14 witness need not be in the place of the
15 deposition and the witness shall be sworn in
16 remotely by the court reporter after
17 confirming the witness's identity, that this
18 Zoom conference will not be recorded unless
19 previously noticed as a videotaped deposition
20 and that any recording without the express
21 written consent of all parties shall be
22 considered unauthorized, in violation of law,
23 and shall not be used for any purpose in this
24 litigation or otherwise.

25 It is further stipulated that

1 exhibits may be marked by the attorney
2 presenting the exhibit to the witness, and
3 that a copy of any exhibit presented to a
4 witness shall be emailed to or otherwise in
5 possession of all counsel prior to any
6 questioning of a witness regarding the exhibit
7 in question. All parties shall bear their own
8 costs in the conduct of this deposition by
9 Zoom conference.

10 So stipulated, counsel?

11 MS. FURST: Lydia Furst, counsel
12 for the City of Philadelphia. And, yes, I
13 agree to the stipulation.

14 MR. WEINERT: Michael Weinert,
15 counsel for intervenors. Yes, I agree to the
16 stipulation.

17 MR. ZIMOLONG: And counsel for
18 plaintiffs, Wally Zimolong. We stipulate.

19 MS. KIRBY: And Amy Kirby, attorney
20 for the City of Philadelphia. We agree to the
21 stipulation.

22 MR. ZIMOLONG: Real quick, Lydia is
23 on and Amy is on as well. Just to be clear,
24 there's only one attorney doing the
25 questioning today?

1 MS. KIRBY: Yes. Lydia is handling
2 this morning, I'm going to be handling this
3 afternoon.

4 MR. ZIMOLONG: Fair enough.

5 ...ALBERT HOFFMAN, after having
6 been first duly sworn, was examined and
7 testified as follows:

8 - - -

9 DIRECT EXAMINATION

10 - - -

11 BY MS. FURST:

12 Q. Good morning, Mr. Hoffman. My name is Lydia
13 Furst, I'm an attorney for the City of Philadelphia, and
14 I'm representing the defendants in this case, along with
15 my co-counsel, Amy Kirby.

16 Mr. Hoffman, have you ever been deposed
17 before?

18 A. Yes.

19 Q. Okay. So I'll just run through the ground rules
20 really, really quickly. As you already know, the court
21 reporter is here taking down everything everyone says,
22 so rather than nodding your head yes or no, you'll need
23 to provide a verbal answer to questions.

24 We should still, even though we're doing this
25 remotely, try to avoid crosstalk so that everything is

1 clear to the court reporter. So I will do my best to
2 avoid interrupting you, and I just ask that you do the
3 same for me.

4 If, at any time, you need to take a break,
5 please just let us know and we can do that. I would
6 only ask that you not take a break in the middle of a
7 question pending, so wait until you've answered the
8 question and ask to take a break, and we can do that at
9 any time.

10 Does that all sound okay?

11 A. That's fine.

12 Q. Okay. And, Mr. Hoffman, is there any reason that
13 you cannot answer questions truthfully today?

14 A. No.

15 Q. Okay. What is your current job?

16 A. I'm the president of Road-Con Incorporated, heavy
17 and highway contractor in West Chester, PA.

18 Q. And how long have you held that position at
19 Road-Con?

20 A. As president, for approximately three years.
21 Overall, I've been with the company 25 years.

22 Q. And just briefly, can you describe for me what
23 your duties are as president of Road-Con?

24 A. Overall supervision and oversight of the entire
25 company's operations, including procurement, management

1 of the projects, management of our resources and shop,
2 and general accounting functions.

3 Q. And what position did you hold prior to
4 president?

5 A. Vice president.

6 Q. Okay. And can you again just briefly describe
7 what your duties were as vice president of Road-Con?

8 A. Same overall duties except I had a superior at
9 that time.

10 Q. Okay. And how long were you in the position of
11 vice president for?

12 A. Approximately 20 years.

13 Q. As president, do you have a role in choosing
14 which contracts Road-Con will bid on?

15 A. I do.

16 Q. And as vice president, did you also have a role
17 in choosing which contracts Road-Con bids on?

18 A. Yes, I did.

19 Q. Going back to your role as president, is there
20 anyone else at Road-Con who's involved in the
21 decision-making upon choosing which projects Road-Con
22 will bid on?

23 A. My chief estimator, Murray Blaker, would suggest
24 projects for us to target, however, I have the final say
25 whether we move ahead or not.

1 Q. Okay. And then in your role as vice president,
2 who else was involved in making decisions as to which
3 projects Road-Con would bid on?

4 A. The current president at that time, Edward J.
5 McKenna.

6 Q. And was the chief estimator also involved in
7 decision-making around bidding while your were vice
8 president?

9 A. At the time he came on board, which was
10 approximately four to five years ago, yes, at that point
11 he was involved. Prior to that, he was not in
12 the -- the position was not here at Road-Con.

13 Q. Okay. So just to clarify, until five years ago,
14 there was no estimator at Road-Con?

15 A. No, there was no chief estimator's position. I
16 would take care of the estimating, along with other
17 project management staff, and then we added the position
18 of chief estimator.

19 Q. When did Road-Con commence business?

20 A. The company was incorporated in 1993.

21 Q. And sorry if I'm doing the math wrong, but does
22 that mean you've been with the company since it was
23 founded?

24 A. Shortly thereafter, yes.

25 Q. Is Road-Con a member of the Pennsylvania Heavy

1 and Highway Contractors Bargaining Association?

2 A. We are.

3 Q. And when did Road-Con become a member of that
4 association?

5 A. Upon inception of the company, in 1993. The
6 company was a buy -- or transfer from another company,
7 Rocon, R-O-C-O-N. That company was a member of the
8 Bargaining Association, therefore, the new company
9 continued in that fashion.

10 Q. Okay. And is Road-Con still a member of that
11 association?

12 A. Yes.

13 Q. Were there ever any lapses in Road-Con's
14 membership in that association?

15 A. No.

16 Q. So you've mentioned the term "heavy and highway."

17 Can you just describe for me what type of
18 construction work does that term include?

19 A. That would include road and street construction,
20 airports, bridgework, sewer treatment plants, all --
21 that's what we classify as heavy construction, in lieu
22 of what it does not include, such as, commercial and
23 residential building.

24 Q. How much of Road-Con's business is Public Works
25 projects?

1 A. Over 95 percent.

2 Q. What is a typical contract amount for Road-Con?

3 A. Our contracts range from \$200,000 to \$60 million,
4 however, our average size would most likely be in the 5
5 to \$15 million range.

6 Q. Okay. Mr. Hoffman, I would just like to show you
7 what I've previously marked as Hoffman Exhibit 1. And
8 I -- I don't know if you have this yet, but I did email
9 it around to counsel last night.

10 MR. ZIMOLONG: I haven't shared any
11 of the documents with the witness. I got them
12 late last night. I'm just seeing them now.
13 So you would have to share the screen.

14 MS. FURST: What I may do -- unless
15 the court reporter tells me this is not a good
16 idea -- is to put it in the chat. I think
17 that just might be smoother. Let me see if I
18 can do that.

19 MR. ZIMOLONG: Off the record.

20 -- --

21 (A brief discussion was held off
22 the record.)

23 -- --

24 MS. FURST: Okay. I apologize for
25 the delay, everyone. I had to rotate the

1 image so it was not sideways.

2 - - -

3 (Exhibit Hoffman 1 marked for
4 identification.)

5 - - -

6 BY MS. FURST:

7 Q. Mr. Hoffman, can you see this document on the
8 screen?

9 A. Yes, I can.

10 Q. Okay. And this has been marked as Hoffman 1.

11 And is this familiar to you, Mr. Hoffman, this
12 document?

13 A. That looks like one of our status of contract
14 sheets that we often put in when an owner requests
15 qualifications or current backlog.

16 Q. Okay. So starting on the first page, it says at
17 the top, 2019 contracts. And then looking at the
18 contract prices, is it accurate that all of the contract
19 prices on this page are under one million?

20 A. On that page, yes.

21 Q. Okay. And then we'll go to the next page, which
22 is 2018 contracts.

23 And then there is it accurate that the contract
24 listed in the very first row is for 12 million and
25 change, and the rest of the contracts on that page for

1 2018 are for 2 million or less; is that right?

2 A. That's correct.

3 Q. And then just one more page. Let's just look at
4 the third page, which is 2017 contracts.

5 So just to confirm here, the second row from
6 the top is a contract for approximately \$3 million; is
7 that right?

8 A. Yes.

9 Q. Just over \$3 million.

10 And then three rows below that, there's a
11 contract for underlying \$5 million; is that right?

12 A. That is correct.

13 Q. And then if you scroll down to the bottom, the
14 second row from the bottom is a contract for
15 approximately \$3 and a half million; is that
16 correct?

17 A. That is correct.

18 Q. But the rest of these contracts reflected on this
19 page for 2017 are all less than \$3 million; is that
20 right?

21 A. Yes.

22 Q. Okay. And is this document a summary of all of
23 Road-Con's contracts for these years?

24 A. Depending on when that document was printed, it
25 may or may not be all-inclusive. For example, 2019 does

1 not appear to be all-inclusive.

2 We generally have 20 or more contracts per
3 year. So that looks to be an incomplete document. It
4 may have been printed during the course of 2019.

5 Q. Understood. So setting aside 2019, does this
6 appear to be accurate for the years 2018 or 2017?

7 A. To the best of my knowledge, yes. I don't
8 believe I can remember every project off the top of my
9 head. It appears to be complete.

10 Q. Okay. I'm going to end the screenshare.

11 So, Mr. Hoffman, is it fair to say that
12 Road-Con has many contracts under \$3 million?

13 A. Yes, we have a good portion that fall under 3
14 million, depending on market conditions and the
15 availability of work, yes.

16 Q. You said that Road-Con is located in West
17 Chester; is that correct?

18 A. That is our home office location, yes.

19 Q. In what states does Road-Con work?

20 A. Pennsylvania, New Jersey, Delaware, occasionally
21 Maryland, although we have not been down in Maryland for
22 quite some time.

23 Q. Okay. Anywhere else?

24 A. No. That's generally our geographical area.

25 Q. Focusing on Pennsylvania, what parts of

1 Pennsylvania does Road-Con work in?

2 A. Generally we target east of the Susquehanna River
3 or the Harrisburg area, so the eastern half of PA, and
4 traveling north up generally to Pocono-type region, the
5 mountain region. Although we do expand further than
6 that on occasion -- we have done projects outside of
7 that area -- that is our normal target area of
8 Pennsylvania.

9 Q. So when working in any of the counties or states
10 outside of Philadelphia, has Road-Con ever signed on to
11 a project labor agreement?

12 A. No.

13 Q. Has Road-Con ever bid on a project that required
14 the successful bidder to sign on to a project labor
15 agreement?

16 A. No, we have not.

17 Q. Does Road-Con monitor Philadelphia invitations to
18 bid on project labor agreements?

19 A. We monitor Philadelphia, as with all the other
20 owners, for overall projects. We review the project to
21 see if there is a project labor agreement before
22 proceeding.

23 Q. Who does that monitoring or review?

24 A. Myself or my chief estimator, Murray Blaker.

25 Q. Okay. What factors does Road-Con consider when

1 determining whether to bid on a City of Philadelphia
2 Public Works project?

3 A. Same as most other projects. It would be the
4 need that we have for capacity and the type of work it
5 is at the time.

6 For example, the company does bridgework, it
7 does roadwork, it does pipework. Those are all
8 different resources. The leaders of those crews are
9 specialized in those areas. So, for example, at one
10 given time of the year we may be full capacity on
11 pipework, but we may be light on bridgework, so we would
12 look for a bridge project to fill that gap.

13 So it's not carte blanche. In other words, we
14 just continue to bid work. We look for the discipline
15 that we're short on at the time or to fill in the gap or
16 schedules for that year.

17 Q. Do you consider the estimated cost of the
18 contract or the contract amounts in determining whether
19 to bid on a project?

20 A. Yes, we look at the size of the project and we
21 also look at the time of it, the duration of the
22 project.

23 For example, a \$10-million job that needed to
24 be done in one year may or may not fit our schedule,
25 versus a \$10-million job that spans over two years.

1 So size and time and the discipline of the work
2 all come into factors as to whether or not we make a
3 decision to bid.

4 Q. And is there a minimum contract amount that
5 you're looking for when you're reviewing Philadelphia
6 Public Works projects?

7 A. No, we don't set a hard minimum. We see what
8 fits at that time.

9 Q. Anything else you can think of that you have to
10 consider when deciding whether to place a bid on a
11 Philadelphia Public Works project?

12 A. The only other item I would think of is if we
13 need -- the load on our estimating department at that
14 time is to the point where we have to make a decision
15 whether we target all projects available or we have to
16 pick and choose because we simply don't have enough time
17 to price all the projects.

18 Q. How much time is typically required for the
19 estimating department to put together a bid?

20 A. That's a complex question to answer. It depends
21 on the complexity of the project, the type of work it
22 is. For example, a straight asphalt overlay project is
23 fairly simple for the estimators to put together,
24 whereas a complex bridge project, in the middle of the
25 city, with a lot of utilities, that would take a lot

1 more time.

2 So they can range from a couple of days, to put
3 a price together, to a few weeks.

4 Q. Do you consider the City of Philadelphia one of
5 Road-Con's clients?

6 A. We consider them an available owner for us to
7 work for. We have targeted the City of Philadelphia
8 projects in the past when available. We do work in the
9 city when we're working for PennDOT. Often PennDOT will
10 be the owner on the project, so we go into the city
11 limits quite often.

12 The -- obviously, the PLA in the past has
13 hampered some of our ability to go in and work directly
14 for the City.

15 Q. Are you familiar with the 15th Street Bridge
16 project that's discussed in the complaint in this case?

17 A. I am, yes.

18 Q. Are you aware that the PLA requirement was
19 removed for that project?

20 A. Yes, I was.

21 Q. And did Road-Con ultimately bid on that project
22 after the PLA was removed?

23 A. I believe we did, and I believe we were second
24 place bidder out of five or so bidders.

25 Q. And are you familiar with the runway project

1 that's also discussed in the complaint in this case?

2 A. Yes. Yes, I am.

3 Q. And are you aware that the PLA requirement was
4 removed for that project?

5 A. Yes, I was.

6 Q. Do you know if Road-Con bid on that project after
7 the PLA was removed?

8 A. We did. We were less competitive on that project
9 due to the nature of the project, but we did place a bid
10 on the project.

11 Q. So prior to the time that the complaint in the
12 case was filed in April of 2019, did Road-Con bid on
13 City of Philadelphia Public Works projects?

14 A. We have in the past, yes. We've bid on City of
15 Philadelphia and the Philadelphia Airport projects in
16 the past.

17 Q. Okay. And can you give me sort of a timeframe of
18 when you recall Road-Con bidding on City of Philadelphia
19 Public Works projects?

20 A. I cannot state a date, which dates we bid on
21 projects over the years. For example, we have 30
22 projects currently on our bid list that generally carry,
23 so we bid a host of projects every year. The timing, I
24 wouldn't be able to -- I would be guessing.

25 Q. Do you believe that Road-Con has placed bids on

1 City of Philadelphia projects within the last five
2 years?

3 A. I believe so. But, again, I'm guessing to some
4 extent of the timing.

5 Q. Okay. Has Road-Con ever been a successful bidder
6 on a Philadelphia Public Works project?

7 A. I cannot recall if we ever worked directly for
8 the City under their Public Works program. Again, we
9 worked in the city for other owners, public owners,
10 SEPTA and PennDOT, but I cannot recall. I cannot
11 recall. I am sorry.

12 Q. Has Road-Con ever refrained from bidding on a
13 city Public Works projects for a reason other than a PLA
14 requirement?

15 A. I am sure there is an instance where we analyze
16 the project and did not like the level of risk or the
17 timing with the schedule and we declined. We do that on
18 many projects, for many owners. We begin to estimate
19 the project.

20 And if, during the course of reviewing it, we
21 find items that we're not comfortable with, then we will
22 discontinue and not price the project.

23 Q. I want to move now to, sort of, projects that
24 post-date the 15th Street and runway project.

25 So do you know if Road-Con has bid on any

1 City of Philadelphia Public Works projects after April
2 2019?

3 A. We have. We have bid on -- two, off the top of
4 my head, were what they call green stormwater
5 improvement projects, and I can't recall if there was
6 another bridge project in there or not. But we have bid
7 directly to the City on a couple projects since that
8 time.

9 Q. Okay. And was Road-Con the successful bidder on
10 any of those projects?

11 A. We were not.

12 Q. Other than -- just setting aside the 15th Street
13 and runway projects for a moment, has Road-Con refrained
14 from submitting bids on other Public Works projects
15 because they include a project labor agreement?

16 A. Yes, we have.

17 Q. Which projects were those?

18 A. There was a series of projects at the
19 Philadelphia Airport, which we inquired about, saw there
20 was a PLA, and declined bidding because we cannot enter
21 into a PLA with our current workforce.

22 Q. And this is a separate airport project from
23 the runway project, that's the subject of the complaint?

24 A. That is correct, yes.

25 Q. Do you recall what year that project is from?

1 A. There have been a couple projects over the
2 last -- each of the last three years at the Philadelphia
3 Airport, which we have declined because they included a
4 PLA.

5 Q. At the time you declined those projects, did you
6 reach out to anyone in the City to -- or the airport to
7 let them know about Road-Con's interest in bidding?

8 A. We inquired to the point of asking if the project
9 had a project labor agreement. Once they said it did,
10 we declined. On a couple occasions they said it did
11 not, we proceeded.

12 Q. Has Road-Con ever bid on a City project that
13 requires a PLA?

14 A. No.

15 Q. How many employees does Road-Con have?

16 A. Well, our employees vary in total because we are
17 seasonal to some effect. The management staff and the
18 tradespeople included would total approximately 100 to
19 120, depending on the volume each year.

20 Q. Okay. And let's start with management staff.

21 How many employees do you have under that
22 category?

23 A. All inclusive, approximately 30.

24 Q. And are those employees full-time employees?

25 A. Yes, the management staff are all full-time

1 employees.

2 Q. And are they permanent employees?

3 A. Yes.

4 Q. So they're not seasonal employees, correct?

5 A. That's correct.

6 Q. Now for tradespeople, approximately how many
7 tradespeople?

8 A. Again, it varies season to season. Anywhere from
9 60 to 90, depending on the workload and type of work
10 that we have. For example, bridgework tends to take
11 more people than roadwork. If we're a little heavier on
12 bridgework, that would increase our volume of
13 tradespeople that particular year.

14 Q. Okay. And the Road-Con tradespeople, are they
15 permanent employees or temporary employees or seasonal
16 employees?

17 A. They're provided to us from the United
18 Steelworker hiring vault under the collective-bargaining
19 agreement, so they are permitted to come and go. For
20 example, as they have a layoff, they can be reassigned
21 to a different steelworker company.

22 Q. So some of the tradespeople that work at
23 Road-Con also work for other contractors; is that
24 correct?

25 A. Other contractors under the Pennsylvania Heavy

1 and Highway Contractors bargaining agreement, yes.

2 Q. Are all of Road-Con's employees members of the
3 United Steelworkers Union?

4 A. Can you repeat that for me?

5 Q. Sure. Are all of Road-Con's employees members of
6 the United Steelworkers?

7 A. No, the management people would not be, only the
8 trade folks we talked about.

9 Q. Apologies. There's some background noise where
10 I'm at.

11 Are Road-Con's management employees members of
12 any union?

13 A. No, they are not.

14 Q. Are all of the tradespeople who work for Road-Con
15 members of the United Steelworkers?

16 A. Yes, they are.

17 Q. I'm going to share my screen again and show you
18 what I've previously marked as Hoffman Exhibit 6.

19 Just one second, please.

20 MS. FURST: Okay. This is Hoffman
21 deposition Exhibit 6.

22 - - -

23 (Exhibit Hoffman 6 marked for
24 identification.)

25 - - -

1 BY MS. FURST:

2 Q. And, Mr. Hoffman, this is your affidavit from a
3 motion that your counsel recently filed.

4 Do you want to take a quick look at this?
5 Just take a moment.

6 A. I'm familiar with the document.

7 Q. Okay. And have you -- let's look at paragraph 6,
8 which says Road-Con -- sorry, paragraph 10, which says
9 that the employees of Road-Con have chosen the United
10 Steelworkers to be their bargaining representative.

11 A. Okay.

12 Q. What do you mean when you say that "They have
13 chosen the United Steelworkers to be their bargaining
14 representative"?

15 A. The employees have the option to be union or to
16 not be union. As I said, from the inception of the
17 company, the current company, was a purchase of an
18 original company founded back in 1969. The employees
19 back at that date, I can't testify to that or how that
20 came about, procured the United Steelworkers or joined
21 the United Steelworkers.

22 And with that, they maintain that status to
23 current day, including through the buyout of when Rocon
24 bought Road-Con.

25 They are -- I don't -- yep, I don't know what

1 else I can explain to it.

2 Q. Okay. Could the employees of Road-Con choose
3 another union in the future to represent them?

4 A. We have an attorney, Andrew Levi, which
5 particularly advises me on the terms and conditions of
6 the bargaining agreement between us and the United
7 Steelworkers. I would say I would look to him to tell
8 me how that process would take place.

9 I would imagine it would have to be a group
10 move. In other words, the individual employees cannot
11 choose to go to another union. They're not allowed to
12 participate in dual unions.

13 But I would imagine that under a certain
14 scenario, the employees as a collective group could vote
15 the union out, but I'm not sure. I would have to refer
16 to my attorney for that.

17 Q. Okay. Thanks. Let's go down to paragraph 22 of
18 your affidavit. And I'll read it.

19 "Because Road-Con maintains a
20 collective-bargaining agreement with United
21 Steelworkers, it cannot perform work on any City of
22 Philadelphia Public Works subject to a project labor
23 agreement with its current workforce."

24 What does the phrase "current workforce" mean
25 in this paragraph?

1 A. It would mean the United Steelworkers.

2 Q. Does it include both Road-Con's management
3 employees and the seasonal tradespeople employees?

4 A. No. I would say my statement to current
5 workforce would be attributed to the seasonal
6 tradespeople. That's what we consider our workforce,
7 our direct force that executes the work.

8 Q. Could Road-Con decide to disaffiliate from the
9 Steelworkers?

10 A. I would have to refer again to my attorney,
11 Andrew Levi, who handles that, and what that process
12 would be. It has not been explored, so I can't really
13 answer the question.

14 Q. Road-Con can perform work on Philadelphia Public
15 Works projects that are not subject to a project labor
16 agreement with its current workforce, correct?

17 A. Yes. Yes. That's why we continue to attempt to
18 procure work from the City.

19 Q. Have you ever asked any employee of Road-Con to
20 change their union membership so that Road-Con can bid
21 on a City of Philadelphia Public Works projects that
22 require a PLA?

23 A. We have not asked the employees that, no.

24 Q. And why not?

25 A. We are under agreement that, to my knowledge,

1 prohibits that.

2 Q. And is that the agreement -- let me go back
3 to -- is that the agreement that the Pennsylvania Heavy
4 and Highway Contractors Bargaining Association entered
5 into with the Steelworkers?

6 A. Yes. The Heavy and Highway Contracting
7 Bargaining Association agreement, at the beginning,
8 explains in the agreement the coverage area for that
9 agreement, and it includes Philadelphia.

10 Q. Would you bid on a City of Philadelphia Public
11 Works project that required a PLA if the United
12 Steelworkers were a party to the PLA?

13 A. That would require a review of the terms of the
14 PLA. If the PLA agreement incorporated the
15 collective-bargaining agreement from the Pennsylvania
16 Heavy and Highway Contractors Bargaining Association,
17 then we could consider it.

18 Otherwise, I would have to refer to my
19 attorney, Andrew Levi, to see if we could work under the
20 terms of the PLA if it included the Steelworkers, but
21 the terms did not mimic our current
22 collective-bargaining agreement. So it's sort of a
23 complex question.

24 Q. Understand. Let me ask it in a less complex way.

25 Would you bid on a City of Philadelphia Public

1 Works project that required a PLA if you could still use
2 Road-Con's current workforce for the project?

3 MR. ZIMOLONG: I'm going to object
4 to the extent that requests a hypothetical,
5 but the witness can clearly answer.

6 THE WITNESS: Yes. Again, there
7 are a couple considerations with that. If we
8 could use our current workforce and maintain
9 our current Health and Welfare Pension
10 programs and not have to duplicate pay or ask
11 our employees to forego their benefits,
12 that's -- as I stated, it is a bit of a
13 complex question.

14 MS. FURST: Okay. Thank you,
15 Mr. Hoffman.

16 I think we should take about a
17 ten-minute break. I may -- I'm either done or
18 will have just a very short amount of
19 questions left after the break. And then I
20 think intervenors may have questions as well,
21 but I think now would be a good time to take a
22 brief break.

23 MR. ZIMOLONG: Just a quick --
24 we're off -- we can go off the record for
25 this.

— — —

(A brief discussion was held off
)

— — —

BY MS. FURST:

Q. As president of Road-Con, do you have any say in whether your employees join a union?

A. No, I do not, not under the current situation. We are signatory to the bargaining agreement, and I do not have a choice to tell the employees to join or not join the union.

As they are hired, they are immediately signed into the union if they're hired for a trade position.

Q. And do you have any say in whether Road-Con continues to be a member of the association that has entered into the agreement with the Steelworkers?

A. The association renews its contract with the United Steelworkers every three years. There is an opportunity to exit from the association.

Q. And do you have a say in whether Road-Con takes an -- takes that opportunity to exit the association?

A. Yes, I do.

MS. FURST: That's all for me for

MR. WEINERT: I just have a few

1 questions.

2 - - -

3 CROSS-EXAMINATION

4 - - -

5 BY MR. WEINERT:

6 Q. Mr. Hoffman, my name is Michael Weinert. I
7 represent the intervenors in this matter, the National
8 Electrical Contractors Association and the Mechanical
9 Service Contractors Association.

10 And previously you testified that you have
11 been on two projects for the City since April of 2019.

12 Did those two projects have PLAs on them?

13 A. Mike, actually, after the question was asked, I
14 had the opportunity to refresh my memory a little bit.
15 It's actually been more than those two projects.

16 In all cases, the projects did not include a
17 PLA. In one case we did on a project, which I did not
18 mention, which was bid through PennDOT but the owner was
19 the City of Philadelphia. It was for a green stormwater
20 management installation. We were a low bidder on that
21 project. The City would ultimately have to sign the
22 contract with us. They did not react for the 60 days
23 and the bid expires at 60 days.

24 When inquired as to why they were not entering
25 into the contract, they said they had some

1 administrative issues and it was going to take longer,
2 if we wanted to extend the time to award, we could,
3 under the condition that the end of the contract was not
4 changed and the price was not changed.

5 Well, obviously, once 60 days goes by, all our
6 pricing expires with our vendors. And not knowing when
7 we could expect to get an award from the City, we had to
8 walk away at that point.

9 That's actually happened on two occasions over
10 the last five years where we bid and we were a low
11 bidder and the City failed to execute the contract
12 within the 60-day limit that's in that contract for the
13 City.

14 The other project was at the Philadelphia
15 Airport. It did not include a PLA. It was to put some
16 safety bollards in front of the over -- or in front of
17 the terminal. And, again, the 60 days was allowed to
18 expire without them signing the contract with us.

19 Q. So that first PennDOT project, that project did
20 have a PLA on it, correct?

21 A. No, it did not.

22 Q. Okay.

23 A. None of the projects I talked about had a PLA.

24 Q. So you've never been on a project for the City
25 with a PLA and been the successful bidder and then

1 reached the point where you would have signed the
2 PLA?

3 A. That is correct, and we've never been in that
4 situation.

5 Q. Okay.

6 MR. WEINERT: That's all the
7 questions I have.

8 MR. ZIMOLONG: I just have -- do
9 you have anything, Lydia?

10 MS. FURST: Thanks, Wally. I was
11 just going to follow up on a couple things
12 real quickly.

13 - - -

14 REDIRECT EXAMINATION

15 - - -

16 BY MS. FURST:

17 Q. So, Mr. Hoffman, you mentioned a stormwater
18 project that was bid through PennDOT but owned by the
19 City of Philadelphia?

20 A. Yes. That's a local match situation. They do it
21 quite often where PennDOT will bid the project, but
22 ultimately the contract is with the City, executed by
23 the City.

24 Q. Understood. Do you remember approximately when
25 you bid on this project?

1 A. It was winter of last year, 2019, 2020. I do not
2 recall the exact date. It was over the winter.

3 Q. Do you remember anything about the contract
4 amount?

5 A. Approximately 1.3, 1.4 million.

6 Q. And do you remember anything about what the
7 project was called?

8 A. I do not. I believe it was 52nd Street in West
9 Philadelphia, was the location. PennDOT would have
10 assigned an SR number, and I don't remember that off the
11 top of my head.

12 Q. Okay. And do you recall, was this the
13 Philadelphia Water Department?

14 A. I believe the contract was to be executed by the
15 City of Philadelphia. I don't know the particular
16 division that was handling the job.

17 Q. Okay. And then you mentioned another project
18 that you recalled Road-Con bidding on and being the
19 lowest responsible bidder.

20 What else can you tell me about that project?

21 A. The timing of which was some years ago. I'm
22 going to say five or six years ago. It was a project
23 for the Philadelphia Airport to install safety bollards
24 in front of the terminal and reconstruct. It was a
25 couple-million-dollar project.

1 Same situation back then, we were low bidder,
2 there was no PLA on the project, so we bid it. We were
3 the lowest responsible bidder. The City was not moving
4 forward with an award. We inquired about it. They said
5 they were having some internal issues.

6 We went down for a scope meeting to review the
7 project, and during the meeting, off the record, they
8 had said they really did not want to award the project
9 to us. And at that time, we let the award expire, we
10 did not fight that situation.

11 Q. Was a reason given as to why the City did not
12 want to award the project to Road-Con?

13 A. Verbally, off the record, I asked them to let me
14 know if there was a problem, and verbally, off the
15 record, he said we were not of the right union type
16 and it was causing some internal friction inside the
17 City.

18 Q. And do you have any recollection of who you spoke
19 to at the airport about this?

20 A. No. It was a meeting between myself, my
21 estimator, project manager that handled the job and
22 about three folks from the City.

23 Q. And, Mr. Hoffman, did you look at any documents
24 in preparation for your deposition?

25 A. Today, just my affidavit.

1 Q. Okay. And what about previous to today, did you
2 look at any documents in preparation for your
3 deposition?

4 A. No.

5 Q. Okay. And you stated that you sort of refreshed
6 your recollection about some things while we just took a
7 break; is that right?

8 A. Yes. Yes. In particular, I was looking -- I
9 knew we had bid more than just the two projects for the
10 City over the course of the last year, and I had not
11 pulled it together as quick as I would have liked to
12 while we were going through the questions.

13 Q. Okay. And did you remember any other projects
14 that Road-Con bid on over the past several years?

15 A. They were the only two that came to mind. We
16 actually do have one or two currently on our bid list to
17 bid on over the upcoming weeks.

18 MS. FURST: Okay. Just one second.

19 Let me just check one thing.

20 (Pause.)

21 Okay. That's all.

22 -- --

23 RECROSS-EXAMINATION

24 -- --

25 BY MR. ZIMOLONG:

1 Q. This is Wally Zimolong. It's not usual I ask my
2 own witnesses some questions at the deposition, but I
3 just wanted to follow up on a couple points to clarify
4 the record.

5 Mr. Hoffman, you testified that Road-Con bid on
6 a project that was going to be -- the contract was going
7 to be signed by the City of Philadelphia, and you did
8 that, or Road-Con did that in the winter of 2019,
9 correct?

10 A. That's correct.

11 Q. And that -- would it have been in and around
12 December of 2019, sound about correct?

13 A. It's about correct, yes. I'd have to pull the
14 records out to find the actual bid date.

15 Q. And that was -- that bid was submitted during the
16 pendency of this litigation, correct?

17 A. Yes.

18 Q. Okay. And Road-Con was the lowest responsible
19 bidder on that project, correct?

20 A. Correct.

21 Q. Okay. And 60 days expired, but the City of
22 Philadelphia never presented a contract to Road-Con,
23 correct?

24 A. That's correct.

25 Q. And on a previous occasion, Road-Con bid on a

1 project owned by the City of Philadelphia Airport in
2 which a similar circumstance occurred, correct?

3 A. Correct.

4 Q. And there were representatives of the City of
5 Philadelphia that told you the reason why Road-Con was
6 not presented a contract was because of its union
7 affiliation, correct?

8 A. Correct.

9 MR. ZIMOLONG: Okay. I don't have
10 anything else for the witness. Thank you.

11 Are we all done? Is the witness
12 done? Lydia? Michael?

13 MR. WEINERT: I have nothing
14 further.

15 MS. FURST: Yeah, I have nothing
16 further.

17 MR. ZIMOLONG: Thank you. Thanks,
18 Al. Have a good day.

19 - - -

20 (Deposition concluded at 10:07
21 a.m.)

22 - - -
23
24
25

C E R T I F I C A T I O N

I, hereby certify that the proceedings and
evidence noted are contained fully and accurately in the
stenographic notes taken by me in the foregoing matter,
and that this is a correct transcript of the same.

Court Reporter - Notary Public

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